

**Remarks/Arguments:**

Claims 1, 10 and 16 stand rejected under 35 U.S.C. 112, second paragraph, as being indefinite. In particular, the Examiner states that the expression, "information inherently available" is unclear. Claims 1, 10 and 16 have been amended to remove the term "inherently," and are believed to be clear.

Claims 1, 3, 10, 12, 16-22 and 28-32 stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Publication No. 2004/0258039 (Stephens) in view of U.S. Patent No. 7289453 (Riedel) and U.S. Patent No. 5926468 (Chapman). Claims 2, 4-9, 11, 13-15, 23-27 and 32-38 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Stephens, Riedel and Chapman, in various combinations with U.S. Publication No. 2004/0151136 (Gage), U.S. Patent No. 5682460 (Hyziak) and U.S. Patent No. 6771594 (Upadrasta). Applicants respectfully disagree that the subject claims are unpatentable, for at least the reasons set out below.

Claim 1 has been amended to recite, *inter alia*:

"determining, prior to transmitting further packets, whether transmission of said at least one packet failed;  
repeating said transmitting and determining steps until said transmitting step is determined to have failed;"

Applicant submits that Stephens – the primary reference upon which the Examiner relies – fails to satisfy the above limitations. Stephens does not make any determination as to the success or failure of a transmission prior to transmitting further packets. Rather, in both of Stephens' transmit modes, which are described at paragraphs [0038] and [0039], Stephens contemplates sending data **continuously**, without waiting for any acknowledgement. As Applicant has argued previously, waiting for acknowledgement after every packet would void

the intended advantage of Stephens' second portion of the TXOP, and would not allow Stephens to achieve higher data throughput even with excellent channel conditions.

Applicant therefore submits that Stephens fails to satisfy the above-recited limitations of claim 1. Furthermore, Stephens would teach a person skilled in the art **away** from applying such limitations to Stephens, **regardless** of where they may be found. For instance, Applicant notes that the Examiner asserts that Chapman discloses "repeating said transmitting step until said transmitting step fails." Even accepting, *arguendo*, that assertion as well as a hypothetical assertion that Chapman **or any other reference** discloses "determining, prior to transmitting further packets, whether transmission of said at least one packet failed," Applicant submits that the rational underpinning required to support the combination of Stephens with any reference which allegedly provides the above-recited limitations **cannot** be provided. That is, there can be no proper reasoning to modify Stephens in order to provide the above limitations, as such modification is clearly discouraged by Stephens himself.

Claim 1 also recites, *inter alia*:

"determining, responsive to said transmitting step failing, a quality of said link"

The Examiner concedes that neither Stephens nor Riedel satisfy the above-recited limitation, and relies on Chapman to provide it. However, the Examiner fails to provide the requisite rational underpinning in support of the combination. Indeed, it would be **impossible** to provide proper rational underpinning for such a combination. As argued in previous replies, Stephens requires that a "service value" be received or detected before transmission even begins. This is clear

from blocks 215 and 220 of Stephens' Figure 2, which set out Stephens' steps for transmitting data. Stephens thus requires the "service value" in order to select a transmit mode and begin transmission, and has no use for such a service value once a transmit mode has been selected and data has been transmitted. Stephens would therefore lead a person skilled in the art **away** from determining a quality of a link **at any point** after a transmission is made. Thus Stephens would lead a person skilled in the art away from the above-recited limitation of claim 1, regardless of where it may be found.

Claim 1 is therefore patentable for at least the above reasons. Claims 10 and 16 have been amended similarly to claim 1, and are therefore also patentable for at least the above reasons. All remaining claims are dependent upon one of claims 1 and 10, and are therefore also believed to be patentable for at least the above reasons.

New claims 39-44 are also submitted for the Examiner's consideration. Applicant notes that claims 39 and 42 are supported at least at paragraph [0035] of the description as published in U.S. Publication No. US 20050190792. Claims 40, 41, 43 and 44 are supported at least at paragraph [0043] of the same publication.

Reconsideration and allowance of all pending claims is respectfully requested.

**Conclusion:**

Applicant believes that this application is now in condition for allowance. To the extent that any issues remain to be resolved, however, Applicant requests that the Examiner contact the undersigned to resolve these issues.

The Commissioner is also authorized to charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-3750.

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Respectfully submitted,

  
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